

## **How much right-of-way do you own? How did you get it, I didn't give it to you!**

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This question is best answered by first explaining what a “right-of-way” is, before answering, “How did you get it?”

The right-of-way concept dates back to English Common Law where the King had right of passage over his subjects' property. American courts recognized and applied this Common Law rule. The U. S. Supreme Court determined in 1832 that for a public road the landowner gives up only right of passage for the public. The owner does not give up the “freehold”, which is the timber, mineral, grazing, or other rights in the soil. The county (for county roads) is the keeper of the public trust for this right of passage. This access strip is commonly called “right-of-way”. In addition, other public uses include utilities such as sewer, water, telephone and power. It can also include drainage facilities like culverts, levees, ditches, and detention ponds.

The first rights-of-way in Washington State were created through petition and establishment. Landowners petitioned the county to lay out and create a road over their property for public use. In the early history of county governments, most of these roads were to get produce and livestock to and from market.

Rights-of-way can also be acquired through dedication of the property to the county when land is subdivided. This is a common practice in counties today.

If added right-of-way along existing county roads is needed for rebuilding a road, it is commonly purchased by deed from a willing seller or by court ordered sale through condemnation.

Right-of-way can also be acquired by “prescription.” Prescription is obtaining the right-of-way through historic continued public use.

All of these ways of obtaining right-of-way are in state law, mostly in RCW Title 36, Section 80. A recognized standard width is 60 feet, although this can vary.

As you can see, right-of-way is a legal relationship between the county and abutting landowners. Your County Engineer is the office of record for all documents related to county roads and the land over which they travel. Your County Engineer and her/his staff are there to help you determine how much right-of-way the county has abutting your property and how it came into existence. I encourage you to make use of this resource.

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Questions about this article, or any of the series, or on other topics related to County Roads, may be directed either to your County Engineer, or to Al King, P.E., County Road Administration Board, Olympia, at [Al@CRAB.Wa.Gov](mailto:Al@CRAB.Wa.Gov).